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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,104	11/12/2003	Douglas Craig Scott	9118M	5134

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EXAMINER

GEMBEH, SHIRLEY V

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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06/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/706,104

Applicant(s)

SCOTT ET AL.

Examiner

SHIRLEY V. GEMBEH

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-29, 31, 32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-29, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO-SB06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

I DETAILED ACTION

The response filed **2/14/08** presents remarks and arguments to the office action mailed **9/10/07**. Applicant's request for reconsideration of the rejection of claims in the last office action has been considered.

Applicant's arguments have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Affidavit

The affidavit submitted on 2/14/08 is acknowledged and has been reviewed. The affidavit submitted include(s) statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

Status of claims

Claims 1-17, 30, 33 and 35 are cancelled and claims 18-21, 28-29, 32 and 34 have been amended.

Claims 18-29, 31-32 and 34 are pending in this office action.

Withdrawn Claim Rejections - 35 USC § 112

Claims 18-29, 31-32 and 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention are withdrawn.

Applicant argument is persuasive.

Maintained Claim Rejections - 35 USC § 103

Applicant argues that the cited references do not teach or suggest the instant claims, that the burden lies upon the PTO to establish prima facie case of obviousness.

That instant claim 18 provides an oral care composition comprising a retentive agent wherein the composition forms an intact hydrated mass that is visible on 2-7 molar for 5 mins to 60 mins after a persons chews two tablet.

That the declaration submitted data Figs. 1 and 2 with Bullseye comprising retentive agent 7% hydroxyethyl cellulose and about 4% carboxymethyl cellulose shows the evident that the cited references cannot be combined.

In response, as stated in the previous office actions of record, the claims recite an oral care comprising a retentive agent, Lawlor discloses an oral care that comprises a retentive agents such as karaya, carboxycellulose. Note that claim 18 does not recite any specific retentive agent, based on the description

and the disclosure in the specification when used as a dictionary, these agents are termed retentive agent. The characteristics of the agents would therefore be the same when chewed. It will be expected to be deposited on the tooth, absent factual evidence.

The affidavit submitted include(s) statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

Next, applicant argues that the showing of Bulleye (applicant's invention in Figs 1 and 2 would remedy the rejection. This is found unpersuasive, because it is true that the showing displayed more retention on the tooth with 7% hydroxyethyl cellulose and 4% carboxymethyl cellulose. This is not disputed, however, the claims recite a broader range of retentive agents. Showing one concentration within the range does not indicate that the result showed will commensurate with the result in Figs. 1 and 2. Thus, the results shown in the declaration are not commensurate in scope with the claimed invention. Based on that the rejection is maintained and repeated in its entirety.

Claims 18-29, 31-32 and 34 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor US 6,706,256 B2 in view of La Rochelle, US 4,157,386 taken with Aberg et al., WO 88/10110.

Lawlor discloses karaya (retentive agent) as required by instant claims 18-21 in the amount of 0.1%- 15% (see col. 21 line 55), wherein the composition is non-

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cariogenic (see col. 20 line 43), a chewable solid unit at col. 15 line 46+ where it is referred to as hard and low boiled candy, wherein the composition is less than 65% at col. 15 lines 9-10, wherein the retentive agent is carboxymethyl cellulose (see col. 21 line 51) as required by instant claim 22-23, anticalculus agent fluoride ion as required by instant claim 24-25 (see col. 10 line 31 and col. 11 line 48), where the solid unit is a compressed tablet as required by instant claim 26, (see col. 26 line 62) comprising a flavor (see col. 23 line 20+), water soluble buffers as sodium bicarbonate (see col. 21 line 62) having a pH pH 3-10 at co. 22 lines 5) as required by instant claim 29. Lawlor further teaches the composition is used in combination with oral hygiene routine of brushing. As to the toothbrush having an flat head and soft , one of ordinary skill in the art would be motivated to use a soft tooth brush as brushing with a hard or medium toothbrush facilitates enamel erosion, absent factual evidence.

La Rochelle teach a soft chewable lozenges that interact with saliva on chewing to coat the surface of a the teeth (see abstract), comprising a fluoride ion , a non-cariogenic, antioxidants (see col. 5, lines 30-47) wherein toothbrush is used after chewing the tablet/lozenges. Specifically La Rochelle teaches present invention become an adhesive mass due to the action of saliva on the dry starch adhesive and polishing agent. This mass sticks to the teeth during the chewing (see col. 2, lines 64-68).

Aberg et al., teach a non-effervescent tablet that forms a paste when chewed (page 5).

One of ordinary skill in the art would have been motivated to modify Aberg's tablet to that of Lawlor and combine the teachings to form a chewable tablet that when in contact with saliva form a deposit on the teeth as taught in the prior art and use a toothbrush for remove a substantial amount of the sticky agents and retain some on the teeth for the cleaning polishing of the tooth as taught by laRochelle. See col. 5, lines 20-22.

One of ordinary skill in the art would have been motivated in combining the prior art of above for the benefit of oral care hygiene and a reasonable expectation of success would have been expected because the prior art teaches the claimed invention at the time the invention was made.

No patentability weight is given to the instruction as claimed in claim 18. See *in re Ngai* 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004). (Personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate).

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL HARTLEY can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

SVG
6/3/08